93-721

No. _____

IN THE SUPREME

COURT OF THE UNITED STATES

OCTOBER TERM, 1993

DONALD LEIF ROKKE - PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE -

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DONALD LEIF ROKKE

221 S.W. 153RD STREET

SUITE #110

SEATTLE, WASHINGTON 98166

(206) 979-0723

10 pp

QUESTIONS PRESENTED

1. Did the 9th Circuit U.S. Court of Appeals Memorandum affirming the Tax Court's Order, but rejection of its holding that Petitioner's contribution was a service violate:

- 1.1 Petitioner's right to a Jury Trial guaranteed by Amendment VII of the U.S. Constitution and
- 1.2 Constitute an unlawful decision based on the case facts, Tax Code, case made law, IRS Rules and Regulations, as well as
- 1.3 Violate Petitioner's Amendment XIV guaranteed Rights to Due Process and Equal Protection of the Laws?

2. Did the 9th Circuit U.S. Court of Appeals's Order denying Petitioner's Motion for Reconsideration violate Petitioner's Amendment XIV Rights to Due Process and Equal Protection of the Laws?

TABLE OF CONTENTS

PETITION FOR WRIT OF CERTIORARI TO THE WASHINGTON STATE SUPREME COURT

OPINIONS BELOW 6

JURISDICTION 7

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 7

STATEMENT OF THE CASE 8

REASON FOR GRANTING THE WRIT 28

CONCLUSION 64

INDEX TO APPENDICES

Appendix 1 I.R.S. 1986 & 1987 Deficiency Finding

Appendix 2 U.S. Tax Court Order denying Petitioner's Motion for

Reconsideration of The Tax Court's March 22, 1991 Denial of Peitioners Motion to transer Petitioner's case to the U.S. District Court for Petitioner's counterclaimed Unjust Enrichment Jury Trial. Dated April 9, 1991

Appendix 3 U.S. Tax Court Notice of Service of Transcript, Dated June 11, 1991 with Tax Court Judges May 10, 1991 Bench Opinion and Oral Finding of Fact attached.

Appendix 4 9th Circuit Court of Appeals July 23, 1993 Order stating case shall be submitted on the briefs and record, without oral argument, on Wednesday, August 4, 1993 in Seattle, Washington.

Appendix 5 9th Circuit Court of Appeals July 29, 1993 Order Denying

Petitioner's Motion for Continuance to enable submittal of recent citations of related cases.

Appendix 6 9th Circuit Court of Appeals August 9, 1993 stamped and unsigned MEMORANDUM Ruling finding against Petitioner on all counts.

Appendix 7 9th Circuit Court of Appeals August 9, 1993 stamped and unsigned Order Denying Petitioner's Motion for Remand to the district court for jury trial, Denying Petitioner's Motion to reconsider the denial of a continuance, and Denying Petitioner's Motion for leave to file additional citations with the additional lcitations memorandum to be rejected and not vileld by the clerk.

Appendix 8 9th Circuit Court of

Appeals September 27, 1993 stampes and unsigned Order Denying Petitioner's Petition fo Rehearing and Rejecting Petitioner's suggestion for rehearing en banc.

Appendix 9 Amendment VII of the United States Constitution

Appendix 10 Amendment XIV of the United States Constitution

Appendix 11 Black's Law Dictionary definition of "Ordinary income."

Appendix 12 IRS PUBLICATION 561 DETERMINING THE VALUE OF DONATED PROPERTY paragraph quote

Appendix 13 Jarre v. Commissioner, 64 T.C. 183 (1975) precedent case

Appendix 14 Goss v. Commissioner, 59 T.C. 594 at page 596 precedent case

Appendix 15 Black's Law Dictionary definition of "Spontaneous declaration."

Appendix 16 Aerospace Engineering April 1989 Edition article about the Advanced Medium-Range Air-to-Air Missile System

Appendix 17 1987 Aviation Week and Space Technology article about the Advanced Medium-Range Air-to-Air Missile System

TABLE OF AUTHORITIES CITED Page No.

CASES

Jarre v. Commissioner, 64 T.C. 183 (1975) 43, 48, 49 & 51

Goss v. Commissioner, 43, 48,
59 T.C. 594 at page 596 49
(1973)

STATUTES

United States Constitution, 3, 8, 12
Seventh Amendment 14, 15,
24, 36

United States Constitution, 6, 8, 18
Fourteenth Amendment 19, 37

Title 28 United States Code, 7
Section 2403(a)

Internal Revenue Code,
Section 170 42
Section 1221(3) 44
Section 1346 14
Section 6512(a) 14

Section 6653(a) 55, 57, 58
62, 63

OTHER LAWS

IRS Publication 544 16

IRS Publication 561 22, 39, 42

COMMON LAW

Unjust Enrichment 2, 3, 12,
14, 24, 29
36, 54

Black's Law Dictionary Definitions:

Ordinary Income 15, 42, 43
50, 59

Spontaneous Declaration 52

Clearly Erroneous 56

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

DONALD LEIF ROKKE, Petitioner

vs.

COMMISSIONER OF INTERNAL REVENUE -

Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

. Petitioner, DONALD LEIF ROKKE, respectfully prays that a writ of

certiorari issue to review the rulings of the United States Court of Appeals for the Ninth Circuit which:

. 1. Contained many errors of fact and law relating to Petitioner's IRS and Tax Court disallowed 1986 contribution of Petitioner's personal property, collection of data, manuscripts. The contributed manuscripts were of "unusual historical importance". The U.S. Government, acting on the contents of this manuscripts collection contribution, realized about $924 Billion in macro Unjust Enrichment. This $924 Billion resulted from the U.S. Government's seizure of $604 Billion in illiquid Savings and Loan organizations assets and a like U. S. Government seizure of $320 Billion in illiquid Bank assets. The IRS/Tax Court disallowance of

Petitioner's 1986 Income Tax Deduction for said contribution plus imposition of penalties on Petitioner constituted breech of unilateral contract, compounded by malice, with the resultant aforementioned Unjust Enrichment of the Government. For that Unjust Enrichment Petitioner was and is Constitutionally entitled to an Amendment VII enabled common law based jury trial.

Petitioner demanded his (Amendment VII) constitutionally guaranteed jury trial in Petitioners first appeal from the IRS's final Deficiency Finding.

Petitioner's demand for a U.S. District Court enabled jury trial was unconstiitutionally denied by the Tax Court as well as by the U.S. Court of Appeals for the Ninth Circuit. When that Jury Trial finally takes place Petitoner will be demanding a finders fee of 20% of the aforementioned $924

Billion in Unjust Enrichment that the U.S. Government realized by acting upon Petitioner's 1986 contribution. In addition, Petitioner will be demanding appropriate penalties for malice based on the IRS/U.S. Courts consistent unjust and with malice aforethought imposition of negligence penalties against Petitioner. Petitioner's 1986 contribution was a perfectly legal deduction for which the IRS/U.S. Courts allowed Petitioner an income tax deduction of $3,421. This malice was compounded by the fact that the IRS/U.S. Courts knew full well that Petitioner's contribution was a personal property, collection of data, manuscripts collection contribution which Congress intended Petitioner to be able to deduct at its full $2 Billion (+) Fair Market Value. This malice was further compounded by the U.S. Government's

Court's chronic and gross abuse of Judicial discretion, misstatement of facts plus mininterpretation of the laws relative to Petitioner's case. In addition, the U.S. Courts involved were guilty of sanctioning gross irregularites of the Court's proceedings which were obviously intended to maliciously diminish, misrepresent, distort, and maliciously damage Petitioner's case.

2. Denied Petitioner's Motion for Reconsideration which would have:

2.1 Implemented Petitioner's Oral Argument against Petitioner's 1986 contribution being mis-categorized as one of services and/or as ordinary income property as well as

. 2.2 Implemented Petitioner's acquisition plus submittal of very relevant additional citations.

. 2.3 Consequently said denial violated Petitioner's Amendment XIV Rights to Due Process and Equal Protection of the Laws.

OPINIONS BELOW

. The unpublished IRS Deficiency Findings, Tax Court Order/Bench Opinion & Oral Finding of Fact, and the U.S. Court of Appeals for the Ninth Circuit Clerk signed Orders as well as the Panel of Judges unsigned Memorandum plus unsigned Orders are the subject of this Petition for Writ of Certiorari. The aforementioned judgement documents are included as Appendix 1

thru 8 to this Petition.

JURISDICTION

The U.S. Court of Appeals for the Ninth Circuit's MEMORANDUM was issued on August 6, 1993. Petitioner is filing a timely Petition for Writ of Certiorari to the United States Supreme Court by means of this document. The United States Supreme Court's jurisdiction is invoked under Title 28, U.S.C. section 2403(a) without the requirement that the U.S. Court of Appeals for the Ninth Circuit certify to the Attorney General the fact that the constitutionality of an Act of Congress was drawn into question.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

. Amendment VII to the United States Constitution is set forth in Appendix 9.

. Amendment XIV to the United States Constitution is set forth in Appendix 10.

STATEMENT OF THE CASE

. 1. Prior to 1986 Petitioner, whose life-long hobby has been macro-economics, became aware and was able to quantify the pre-Resolution Trust Corporation monumental debt of this nations banking and savings and loan industry. It appeared that nothing short of a free world economic collapse could resolve this prodigious debt bubble. Petitioner shared his concern with a CIA agent who was mentoring Petitioner after Petitioner's return

from a 4.5 year tour of duty with an Arabian CIA cover company. The CIA agent pleaded with Petitioner to identify a "national entity survival" scenario that would extricate the nation short of a free world economic collapse and/or run away inflation. In December 1986 Petitioner was able to satisfactorily summarize the nations Bank/S&L debt crisis and identify a viable national entity survival scenario. In mid-December 1986 Petitioner contributed this Personal Property, Collection of Data, Manuscripts collection to President Ronald Reagan with copies to Mr. Baker the Secretary of Treasury and Mr. Casey the head of the CIA.

2. In mid-January President Reagan, acting on this crisis information, assembled a massive joint-

task-force comprised of the The U.S. Attorney General's Office, The Department of Justice, The FBI, The Federal Home Loan Bank Board, The Treasury Department, the FDIC, the FSLIC, and the IRS to cope with the problem. The U.S. Government utilized Petitioner Collection of Data and National Entity Survival Scenario contribution to resolve the monumental Bank/S&L debt crisis without economic collapse of the entire free world or run away inflation.

3. In April 1987 Petitioner claimed a 1986 Federal Income Tax Deduction of $250,000 as the modestly estimated Fair Market Value of Petitioner's Personal Property, Collection of Data, Manuscripts contribution. This contribution has proven to be of profound historically

important.

. 4. In December 1988 the IRS Examined Petitioner's 1986 Federal Income Tax Return and disalloved Petitioner's Personal Property, Collection of Data, Manuscripts contribution. The IRS alleged that it was a contribution of Petitioner's Ordinary Income Property.

. 5. Petitioner appealed that finding up thru the IRS appeal heirarchy with no deviation in the IRS posture that Petitioner's 1986 contribution was disalloved because it was considered to be a donation of Ordinary Income Property. See Appendix 1 for that final IRS Deficiency Finding.

. 6. On April 10, 1990 Petitioner, as specifically directed by

the IRS, Appealed to the United States Tax Court. This Appeal contested the 1986 and 1987 Income Tax Assessments. This Appeal also demanded a jury trial based on the Common Law Unjust Enrichment aspects of this case and Petitioner's Right to a Jury Trial that is guaranteed by Amendment VII of the U.S. Constitution.

7. Petitioner soon realized that he had committed a procedural error by appealing, as directed by the IRS, to the U.S. Tax Court where Jury Trials are not provided. Instead Petitioner should have Appealed to the U.S. District Court which can implement Jury Trial Proceedings. On March 18, 1991 Petitioner submitted a Motion to the Tax Court requesting transfer of his case to the U.S. District Court to implement Petitioner's demand for a Jury Trial

based on the Unjust Enrichment Common Law aspects of this case. This Motion was returned to Petitioner denied by the Tax Court with March 22, 1991 clearly stamped as the denial date.

. 8. On March 29, 1991 Petitioner submitted a Motion for Reconsideration of Petitioners Motion to transer the case to the U.S. District Court.

. 9. On April 9, 1991 the Tax Court issued an unconstitutional Order denying Petitioner's Motion to transfer the case to U.S. District Court. See Appendix 2 for a copy of that Order. The erroneous rational used by the Tax Court in that order was that:

. "... there is no merit to petitioner's request for a jury trial in

the Tax Court." with precident cases cited and

. "... once a petitioner files a Tax Court petition, the Tax Court has exclusive jurisdiction and no other suit involving the determination of tax due for year covered by the petition may be brought by petitioner. Sec. 6512(a), I.R.C. Thus , section 6512(a), I.R.C., operates as a limitation on the general jurisdiction grant of section 1346, I.R.C., which grants the District Court jurisdiction over suits to recover taxes."

.Clearly the Tax Court Judge erred by using inferior I.R.C. statutes to violate Petitioner's Amendment VII guaranteed Constitutional Right to a Jury Trial. Petitioner's jury trial right was based on the Unjust Enrichment

Common Law aspects of this case and the trial by jury for Common Law issues provided by Amendment VII of the U.S. Constitution. The U.S. Constitution is the supreme law of the nation. The Tax Court Judge erred when he violated Petitioner's Constitutional Rights to a Jury Trial based on the aforementioned Judge cited "lesser law" I.R.C. provisions.

10. During the ensuing May 6, 1991 Tax Court hearing the IRS argued that the contribution was unallowable because it was a contribution of Ordinary Income Property. Using Black's Law Dictionary's definition of Ordinary Income Property (See Appendix ii) and Petitioner's life long collection of W2 and 1040 Professional Engineer Income Tax Returns Petitioner was able to

convincingly prove that the contested contribution constituted a donation of Petitioner's Personal Property, Collection of Data, Manuscripts. IRS Pamphlet 544 Sales and Other Disposition of Assets identifies personal property, collections, manuscripts as an allowable contribution category for which the fair market value can be deducted. History has proven that Petitioner's 1986 contribution was a donation of great historical significance. Copies of Petitioner's 1986 contribution have been accepted by the Library of Congress and the National Archives to preserve the place of these Personal Property, Collection of Data, Manuscripts in history.

. 11. After the Tax Court Hearing on May 6, 1991 in Seattle, the tax court Judge returned to Washington

D.C.. There, on May 10, 1991 -- after the trial, the Tax Court Judge wrote a Bench Opinion and Oral Finding of Fact Judgment disallowing Petitioner's 1986 Contribution as an Income Tax Deduction. The grounds that the Judge cited for denial of Petitioner's 1986 contribution was the fact that the Judge considered Petitioner's 1986 contribution to be a contribution of Petitioner's Services. See Appendix 3 for this May 10, 1991 Tax Court Bench Opinion and Oral Findings of Fact document.

12. Contribution of Petitioner's Services was never an issue between Petitioner and the IRS nor was it discussed with even a scintilla of reference during the May 6, 1991 Tax Court Hearing. Since appropriate dictionaries define "service" to be: "useful labor that does not produce a

tangible commodity" Petitioner recognized immediately that the Tax Court Judges Bench Opinion & Oral Findings of Fact were in error in the most fundamental way. Petitioner's 1986 Personal Property, Collection of Data, Manuscripts donation was most definately not a contribution of Petitioner's "Services". In addition, the Judge's Order violated Petitioner's Amendment XIV of the U.S. Constitution Rights to Due Process and Equal Protection of the Laws since the Judges Opinion changed the "charges" after the trial. This post-trial "charges" change prevented petitioner from having an adequate opportunity to "prepare for" and an "in court opportunity to defend against" the "contribution of services" allegation that are the basis of the Tax Court Judge's post-trial final opinion. These gross violations of Petitioner's

Amendment XIV guaranteed Constitutional Rights motivated Petitioner's November 25, 1991 Notice of Appeal to the United States Court of Appeals for the Ninth Circuit.

. 13. To regress a bit, while preparing for the May 6, 1991 Tax Court Hearing in Seattle Petitioner contacted several professional manuscript appraisers in an attempt to obtain an impartial Nth party evaluation of the Fair Market Value of Petitioner's 1986 Personal Property Collection of Data Manuscripts Contribution. When these professional appraisers learned that Petitioner needed their appraisal for IRS and Tax Court purposes none of them would agree to make such an appraisal.

. 14. In November 1990 Petitioner discovered a wonderful source

of comparable though lesser grants and studies that the U.S. Government had been willing to fund. George Will wrote a newspaper article identifying several less than necessary studies and grants that the U.S. Government had recently funded for significant sums of money. All of his data was taken from the "Heritage Foundations list of less than-vital spending" items.

. 15. Petitioner was able to obtain a copy of the Heritage Foundation Document cited in the aforementioned George Will newspaper article. This compilation includes many items of capital improvements and other expenditures that were not relevant to establishment of the Fair Market Value of Petitioner's 1986 contribution.

. 16. Petitioner rendered the

Heritage Foundation document to arrive at the list of 76 studies and grants funded by the U.S. Government which were relevant to establishing the Fair Market Value of Petitioner's 1986 contribution based on real life comparable Fair Market Value Transactions. These were analyzed and discovered to justify a fair market value in excess of two billion dollars for Petitioner's 1986 contributed Personal Property, Collection of Data, Manuscripts. This Fair Market Value determination was based on the IRS Publication 561 "Determining the Value of Donated Property" Fair Market Value determination methodology. That process involves comparison of Petitioner's contribution with sales of comparable though lesser properties for which the U.S. Government was willing to invest its funds. See Appendix 12 for the

aforementioned Publication 561 Fair Market Value Determination Methodology quote.

. 17. In March thru May of 1993 Petitoner became aware of newspaper articles that indicated that high U.S. Government officials were making post-retirement massive contributions of their manuscript collections (official papers) to the Library of Congress, the National Archives, and similar non-profit institutions. It was obvious from Petitioner's knowledge of the Tax Laws as well as IRS Rules and Regulations/Publications that the contributions of these historically significant collection of data manuscripts could qualify the ex-high government official for substantial income tax deduction entitlements. Such entitlements would be directly analagous

to Petitoner's 1986 Personal Property, Collection of Data, Manuscripts contribution to the U.S. Government. Petitioner is in the process of acquiring relevant Federal Income Tax Returns to gain the evidence required to cite said IRS alloved contributions contained therein as precident cases supportive of Petitioner's 1986 contribution. Petitioner was not able to properly develope these Precident Case Citations prior to the August 4, 1993 9th Circuit Court of Appeals hearing due to a variety of factors.

18. On July 22, 1993 Petitioner filed a formal Motion for Continuance with the Ninth Circuit Court of Appeals to allow a fair opportunity for acquisition of the aforementioned additional citations.

. 19. On July 23, 1993 the 9th Circuit U.S. Court of Appeals Deputy Clerk issued an order stating: "This case shall be submitted on the briefs and record without oral argument on Wednesday, August 4, 1993, in Seattle, Washington." See Appendix 4 for that Order.

. 20. Petitioner filed his 9th Circuit Court Hearing Brief on July 26, 1993.

. 21. On July 29, 1993 Petitioner filed a Motion for Remand of this Case back to the U.S. District Court for Jury Trial as guaranteed by Amendment VII of the U.S. Constitution and the Unjust Enrichment Common Law nature of the case.

. 22. On July 29, 1993 the 9th

Circuit U.S. Court of Appeals Judges issued a Deputy Clerk signed Order denying Petitioner's Motion for Continuance. See Appendix 5.

23. On August 3, 1993 Petitioner filed his Motion for Reconsideration of the 9th Circuit Court of Appeals July 29, 1993 Order denying Petitioner's Motion for Continuance.

24. On August 3, 1993 Petitioner filed his submittal of Additional Citations of Relevant Decisions Rendered and/or Discovered Since Filing of Petitioner's Last Brief plus Petitioner's Motion for Leave for Delayed Filing of Additional Citations of Relevant Decisions.

25. On August 4, 1993 the 9th Circuit Court of appeals issued a

Notice that Petitioner's Cases 91-70722 and 92-70546 were Submitted August 4, 1993 for Decision by Three Seattle 9th Circuit Court Judges.

. 26. On August 6, 1993 the 9th Circuit Court of Appeals Judges issued an unsigned and therefore unlawful memorandum decisions for Cases 91-70722 and 92-7546. That memorandum contained monumental misstatements of the fact of the case, gross distortions of the facts of this case, misinterpretation of the Internal Revenue Code (Laws), extensive violations of Petitioner's Constitutional Rights plus malicious acts intended to damage and diminish Petitioner's case. See Appendix 6 for this Memorandum for Case No. 91-70722.

. 27. On August 9, 1993 Petitioner filed a Motion for

Continuance citing his efforts to develope recent citations via Freedon of Information Act Requests.

. 28. On August 9, 1993 the 9th Circuit Court issued an unsigned and therefore unlawful Order for Case No. 91-70722 stating:

"IT IS ORDERED that:

the motion for remand to the district court for jury trial is DENIED;

the motion to reconsider the denial of a continuance is DENIED:

The Motion for leave to file additional citations is DENIED and the additional citations memorandum will be rejected and not filed by the Clerk."

The top of this Order was marked: "NOT FOR PUBLICATION". See Appendix 7 for a record of that Order.

. 29. On August 18, 1993

Petitioner filed with the 9th Circuit Court a Petition for Rehearing of Case No. 92-70546 and a Petition for Rehearing with suggestion for Rehearing En Banc for Case No. 91-70722.

. 30. On September 27, 1993 the 9th Circuit Court issued an unsigned and therefore unlawful Order denying Petitioners Motion for Rehearing of Case No. 91-70722 and rejected Petitioner's suggestion for rehearing en banc. See Appendix 8 for a record of that Order.

REASON FOR GRANTING THE WRIT

. Certiorari should be granted for several reasons:

This Petition presents issues resolved by implication by this Court but not specifically and unequivocally

decided by this Court; and the Opinion below conflicts, by implication, with previous decision of the Courts.

This case deals with portions of the I.R.C. that pertain to taxpayer contributions of capital asset personal property vs ordinary income property contributions. Such contributions are chronically and maliciously as well as intentionally mis-interpreted plus, mis-applied by the I.R.S., the Tax Court, and the 9th Circuit Court of Appeals. This abuse of process and judicial discretion plus accompanying gross irregularities by officers of the courts results in the intentional, if not in fact criminal, Unjust Enrichment of the U.S. Government at taxpayers expense. This standard operation procedure by the organizational entities involved results in gross violation of

the interest of justice as well as gross vilostion of the taxpayers Constitutional Rights. Review of this case by the U.S. Supreme Court is urgently required to correct this chronic, cancerous, and disgraceful practices of the IRS and the U.S. Appellate Courts.

Introduction:

In this section we will be dealing with a number of Internal Revenue Code Statutes, IRS Rules and Regulations, IRS Publications, Amendments of the United States Constitution and the Rights they Guarantee, Common Law, Case Made Law, Federal Rules of Civil Appellate Procedure, appropriate dictionary legal definitions, and the United States Tax Court Rules of Practice and Procedure requirements as they apply to the 9th Circuit Court of Appeals, August 6, 1993

MEMORANDUM Ruling which was unsigned by the Judges plus unsigned August 9 as well as September 27, 1993 9th Circuit Court Orders.

I. First it should be stated that justice has not been served by the IRS during the processing of this case. This is true with regard to the IRS because there were many errors of fact, errors of law, intentional distortions, and malicious attempts to discredit and/or diminish Petitioner's case which were included in the February 5, 1990 IRS final Tax Deficiency Finding. See Appendix 1 for a copy of that document. The above identified errors and misdeeds are identifiable by comparing the content of Appendix 1 with the above STATEMENT OF THE CASE.

II. Second it should be stated that justice has not been served by the Tax Court during the processing of this

case. This is true with regard to the Tax Court because there were many errors of fact, errors of law, intentional distortions, and malicious attempts to discredit and/or diminish Petitioner's case which were included in the May 10, 1991 Tax Court Bench Opinion and Oral Finding of Facts. See Appendix 3 for a copy of that document. The above identified errors and misdeeds are identifiable by comparing the content of Appendix 3 with the above STATEMENT OF THE CASE.

III. Third it should be pointed out that the Justice Department Defaulted on their case by admitting, via devault, a preponderance of Petitioner's 9th Circuit Court of Appeals Brief. This default came about by the Justice Department's failure to deny or rebutt the content of major elements of Petitioner's 9th Circuit Court of

Appeals Brief in the Justic Department's Answer Brief. The Justice Department's default on the case was specified, as follows, and pointed out in Petitioner's 9th Circuit Court of Appeals Reply Brief:

"STATEMENT OF ISSUES"

"I. U.S. JUSTICE DEPARTMENT DEFAULTS:"

"1. U.S. Justice Department's Answer Brief only responded to Appellant's Statement of the Issues Items Numbered 1, 3, 7 and 8. Consequently Appellant's Statement of the Issues Items Numbered 2, 4, 5, 6, 9, 10 and 11 are considered to be admitted by the U.S. Justice Department by default."

"2. U.S. Justice Department's Answer Brief only responded to Appellant's Statement of the Case Items Numbered 1, 4, 5, 6, 7, 9, lines 1 thru 3 of 10, and 11. Consequently Appellant's Statement of the Case Items Numbered 2, 3, 8,

lines 4 and on of Item 10, 12, 13, 14, 15, 16, and 17 are considered to be admitted by the U.S. Justice Department by default."

"3. U.S. Justice Department's Answer Brief only responded to Appellant's Arguments Numbered 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, and 17. Consequently Appellant's Arguments Numbered 8, 9, 13, 14, 15, 16, 18, and 19 are considered to be admitted by the U.S. Justice Department by default."

IV. Fourth it should be stated that justice has not been served by the IRS, the Tax Court or at the 9th Circuit Court of Appeals level. This is true with regard to the 9th Circuit Court of Appeals because there were many errors of fact, errors of law, intentional distortions, and malicious attempts to discredit and/or diminish Petitioner's case which were included in the August

6, 1993 9th Circuit Court of Appeals (UNSIGNED AND THEREFORE UNLAWLFUL) MEMORANDUM Ruling. See Appendix 6 for a copy of that MEMORANDUM. The following quotes from that MEMORANDUM Ruling are contested, denied, or rebutted by the preceeding STATEMENT OF THE CASE section of this Petition or by Petitioner's accompanying rebuttal comments below:

. MEMORANDUM Ruling Quote (MRQ): "Rokke compiled a document entitled ""Macro Economics Study Collection of Data."" It consisted of his five-page analysis and appended materials (Primarily magazine and newspaper clippings)."

Petitioner's rebuttal statement: The above "and appended materials (magazine and newspaper clippings comment)." is a complete fiction.

. MRQ: "Rokke appealed to the tax court."

Petitioner's rebuttal statement: The above statement is O.K. as far as it goes_but it fails to mention the gross amount of resources Petitioner has been forced to expand via Motion for Transfer/Remand of the case to the U.S. District Court to implement Petitioner's demanded jury trial based on the common law Unjust Enrichment aspects of this case and the jury trial guarantees for common law cases which is contained in Amendment VII of the U.S. Constitution.

. MRQ: "The Tax Court held that Rokke's contribution was a service. ...."

Petitioner's rebuttal statement: This is a nice benign statement but it fails to mention the fact that the issues of services was only raised by the Tax Court Judge four days after the trial had been completed. This changing of the "charges" after the trial denied

Petitioner his rights to an adequate opportunity to prepare his case against the "contribution was a contribution of services" charges and present his defense on this issue during the trial. This changing of the "charges" after the trial denied Petitioner his rights to Due Process and Equal Protection of the Laws as guaranteed by Amendment XIV of the U.S. Constitution.

The IRS, during its pre-trial handling of this case and during the trial, maintained that Rokke's contribution was being denied because it was considered, by the IRS, to be a contribution of "ordinary income property". Four days after the trial was over and the litigants had departed the Tax Court Judge decided that Rokke's contribution should be denied on the basis that it was a contribution of "services" instead of a contribution of

"ordinary income property". ...."

Mr. Rokke consistently argued that the contribution was not a donation of "ordinary income property" because Black's Law Dictionary states that:

"Ordinary Income. Term embraces income from regular sources such as wages, commissions, interest, dividends and the like." See Appendix 11.

Mr. Rokke appropriately entered into evidence his life long collection of W2 and IRS 1040 Tax Return Copies which proved that he had spent his entire pre-retirement career employed as a Professional Engineer with companies in the Aerospace and Petro-Chemical industry. Rokke argued that he had never earned one cent of "ordinary income" from employment in the banking, savings and loan, or other aspects of the financial industry. Rokke argued that the Collection of Data, Manuscripts

that he contributed to President Reagan in 1986 was a contribution of Rokke's Personal Property, Collection of Data, Manuscripts which IRS Publication 544 Sales and Other Disposition of Assets clearly indicates that Petitioner could deduct at their fair market value. This was especially reinforced by a paragraph in IRS Publication 561 Determining the Value of Donated Property which states in part: "Manuscripts, autographs, diaries, and similar items that are handwritten, or at least signed by famous people, often are in demand and are valuable. The writings of unknowns also may be of value if they are of unusual historical or literary importance." See Appendix 12 for a full quote of this Publication 561 paragraph. Petitioner argues that his contributed manuscripts are of "unusual historical importance" because

the U.S. Government utilized the national economic crisis analysis and the national entity survival scenario, contained therein, to cope with the "1986 and on" Banking plus S&L industry debt crisis. Petitioner's national entity survival scenario enabled the U.S. Government to solve the national economic crisis without collapse of the free world economies or run away inflation. Petitioner alleges that the above cited "objected to" sentence of the August 6, 1993 MEMORANDUM Ruling was constructed to intentionally mask the fact that the Tax Court Judge changed the grounds for disallowing Petitioners contribution after the trial was over instead of during the trial as the "objected to" sentence would imply. Petitioner argues that this is one specific example of the malice that the Judges of the 9th Circuit Court of

Appeals demonstrated against Petitioner in a consistent effort to damage and/or diminish Petitioner's case on appeal.

In the "II. Charitable Contribution Deduction" section of the 9th Circuit Court's August 6, 1993 MEMORANDUM Ruling there is an obvious misinterpretation and misapplication of the laws that are relevant to this case. This misinterpretation and misapplication is identified in the last three sentences of the first paragraph of MEMORANDUM Section II quoted below:

. MRQ: "He (Rokke) argues that the tax court erred in characterizing his constribution as a service. He believes that it was a capital asset. We affirm the tax court on other grounds."

Petitioner's rebuttal statement: Petitioner maintains that this is a major error of fact and law as well as a

major misapplication of the law. Petitioner maintains that this is a situation in which the Tax Code is chronically and erroneously misinterpreted and misapplied. This came about via the error of utilizing IRC section 170 to define "ordinary income property" instead of using Black's Law Dictionary legal definition of that category of property as discussed above. This is coupled by the fact that Rokke's contribution was a legitimate contribution for which he could deduct its fair market value by virtue of the fact that it was of "unusual historical importance". A contribution of ordinary income property of "unusual historical importance" is deductible at its fair market value as sanctioned by IRS Publication 561 Determining the Value of Donated Property, see Appendix 12, as well as in the case of Jarre v.

Commissioner, 64 T.C. 183 (1975), see Appendix 13, and Goss v. Commissioner, 59 T.C. 594 at page 596, see Appendix 14.

. MRQ: "The contribution was neither a service, nor a capital asset, as Rokke Contends. He contributed Ordinary income property, for which he is entitled to deduct, at most, his cost basis. The Commissioner correctly limited Rokke's deduction."

Petitioner's rebuttal statement: The foregoing is a case in point of the chronic misinterpretation and mis-application of the Tax Laws in cases inolving contributions of property. The IRS and the Tax Court self-servingly indulge a highly unlawful definitin of "ordinary income property" to fill their coffers at tax payers expense. In this case the property Petitioner contributed could in no way be considered property of the type from which Petitioner ever

derived ordinary income during his entire professional engineering career.

. MRQ: "A letter in the possession of its author is specifically excluded from the definition of a capital asset under I.R.C. section 1221(3)." and the rest of that paragraph is rebutted below by Petitioner:

Petitioner's rebuttal statement: That portion of the Tax Code, when properly interpreted, only applies to letters that one writes during the production of his ordinary income. Letter's written by taxpayer's that are not associated with production of the tax payer's ordinary income are, by any rational persons interpretation, that person's personal property. Are letters written by U.S. Soldiers in Somalia to their dear old mothers back home the soldier's ordinary income property or the soldier's personal property? Be

rational and reasonable for a change. "Get a life" as my daughter would say.

. MRQ: "Rokke also appended several hundred pages of newspaper and magazine clippings to this letter." and the rest of that paragraph are rebutted below:

Petitioner's rebuttal statement: This is the most outrageous and irresponsible statement of a non-fact of this case that the panel of 9th Circuit Court Judges could possibly make. It is included in this MEMORANDUM maliciously and with malice aforethought in an attempt by the judges to minimize, smear and diminish as well as distort Petitoners case. The 9th Circuit Court Judges are attemptin to imply that Petitioner is an imbecile. Only an imbecile would send several hundred pages of newspaper and magazine clippings to a President who

administered his entire tenure in office via cryptic "one liners" written on the back of his 3"x5" cue cards. The total cost of postage for this contribution per copy mailed was $1.84 of which $1.09 was for certified mail fees. No way could Petitioner have appended several hundred pages of newspaper and magazine clippings to Petitioner's contributed 5 page collection of manuscripts and mailed that mess from Denver to Washington D.C. for $0.79 postage. Receipts for the postage of this contribution were included in the official evidence that was furnished to the court to implement the Tax Court Trial. This is such an irresponsible act on the part of the 9th Circuit Court Judges that Petitioner demands penalties for malice in the final settlement of this case.

. MRQ: "Based on these findings,

we hold that Rokke contributed ordinary income property to the United States." and the rest of that paragraph.

Petitioner's rebuttal statement: Petitioner has proven that the 9th Circuit Court of Appeals Judges findings are principally in error and unsustainable via the above comments relative to this MEMORANDUM. It follows then that the Judges "Based on these findings, we hold that Rokke contributed ordinary income property ..." must also be completely in error. This is based on the 9th Circuit Court of Appeals Judge's misinterpretation of the facts and laws that pertain to this case. The above contested MEMORANDUM Ruling quote is therefore unsustainable.

. MRQ: "The Tax Court incorrectly held that Rokke contributed a service. A contribution .....(Donation of blood is a service under section 170)."

Petitioner's rebuttal statement: Petitioner in general concurs, with minor reservations, with the above identified paragraph from the 9th Circuit Court of Appeals August 6, 1993 MEMORANDUM.

. MRQ: "The tax court incorrectly held that Rokke contributed a service. A contribution can not be both a service and ordinary income property. Where contributions have consisted of both property and services, courts have held them to be property where there is a "coalescence" of the property and service into a separate piece of tangible property. .... Goss v. Commissioner, 59 T.C. 594, 596 (1973) (completed essays formed something different from taxpayer's services and blank paper on which they were printed). See also Jarre v. Commissioner, 64 T.C. 183 (1975) (music

manuscripts); ..."

Petitioner's rebuttal statement: Petitioner has consistently, throughout processing of this case thru the IRS, Tax Court, and the 9th Circuit Court of Appeals, cited Goss v. Commissioner and Jarre v. Commissioner as relevant precedent case made law. In the Goss case the taxpayer was alloved to claim as a legitimate deduction from his taxes the F.M.V. of two essays on economics. The contributor, who was a professional economists, had composed to support the efforts of a negro women's organization. See Appendix 14 for a copy of Goss v. Commissioner. So here Goss was alloved a F.M.V. deduction for his "ordinary income property" collection of manuscripts even though they were not of unusual historical importance. In the Jarre case the taxpayer was a world famous composer of music for the cinema

industry. So music manuscripts were Jarre's "ordinary income property". Some of these manuscripts were of considerable fame and therefore "unusual historical importance" such as the musical score Jarre composed for the movie Dr. Zhivago. At one point in his career Jarre decided to donate the original music manuscripts from Dr. Zhivago and other similar classics to a University. Jarre claimed a deduction for same at their fair market value (at that point undetermined). In the final analysis the courts allowed Jarre's contribution of his ordinary income property music manuscript collection and even interceeded on Jarre's behalf in the role of an expert witness and/or professional appraiser to determine the Court allowed fair market value of the contributed unusually historically important manuscript collection. See

Appendix 13 for a copy of Jarre v. Commissioner. Petitioner argues that Jarre v. Commissioner definately identifies the legitimacy, as an income tax deduction, of Petitioner's 1986 collection of manuscripts contribution even if that contribution was in the final analysis determined to be Petitioner's ordinary income property. Definately history will prove Petitioner's "national economic crisis" identification/solution collection of manuscripts to be of much more "unusual historical importance" than the musical manuscript collection from the movie Dr. Zhivago that Jarre contributed.

. MRQ: "The value of Rokke's collection of articles, the blank paper on which he typed his letter, and his analysis of the national economic crisis also ""coalesced"" into a separate piece of property. That property was a

tangible ""study,"" which he could have attempted to sell, and to which attached some (albiet minimal) market value."

Petitioner's rebuttal statement: In this paragraph the Judges of the 9th Circuit Court of Appeals make some very significant "Spontaneous Declaration" type admissions. See Appendix 15 for Black's Law Dictionary definition of "Spontaneous Declaration". The phrase: "his analysis of the national economic crisis" indicates that the 9th Circuit Court of Appeals Judges agree that Petitioner was probably the first person to identify the truly threatening "national economic crisis". This being the case it goes without saying that petitioner was, for sure, the first person to prove the existance of same to the President of the United States plus other high government officials. By the same token then Petitioner was, for

sure, the first person to provide these the President et al with a national entity survival scenario which embodied a "neat solution" to this free world economic crisis. Those officials used Petitioner's national entity survival scenario to successfully avoid collapse of the entire free world economies without run away inflation and/or other major economic ills. Indeed our current time period in history is blessed with some of the soundest Banks and Savings and Loan institutions in the history of this nation. They are prospering, as never before, from this nations current miniscule inflation rate and attendant very favorable Bank/S&L borrowing and lending interest rate differentials. The other portion of the above identified MEMORANDUM paragraph states: "That property was a tangible ""study"", which he could have attempted to sell,

and to which attached some (albeit minimal) market value." Since the U.S. Government has been enriched approximately $924 Billion by seizing the assets of illiquid Banks and Savings and Loan organizations while the Taxpayer has been neatly stuck with hundreds of billions of dollars worth of 40 year bonds to pay off the collapsed Bank and S&L insured depositors how come the Petitioner's contribution, which engineered this remarkable bit of U.S. Government Unjust Enrichment, is being considered to have had "some (albeit minimal) market value"? This is especially true since Petitioner submitted to the 9th Circuit Court of Appeals ample proof, based on Heritage Foundation identified sales of comparable though lesser studies and like items to the U.S. Government, that Petitioner's contribution had a Fair

Market Value in excess of $2 Billion? The Justice Department agreed with this $2 Billion (+) fair market value via comparable sales analysis by default prior to and during the August 4, 1993 hearing. The above objected to 9th Circuit Court of Appeals Judge's statement was maliciously included by the 9th Circuit Court of Appeals Judges to, with malice aforethought, denegrated, diminish, and dicredit the "unusual historical importance" of Petitioners 1986 collection of manuscripts contribution.

. MRQ: "Rokke contends that he is not liable for a negligence penalty under section 6653(a). He submits that the tax court and the Commissioner ""agreed that his deduction was legitimate,"" by allowing him to deduct his $3,421 cost basis, and that the tax court disallowed the IRS penalty for

overvaluation. He argues that these facts show that he was not negligent. There is no merit to this argument. We review a tax court's affirmance of negligence penalties under the clearly erroneous standard."

Petitioner's rebuttal statement: Petitioner argues that any reasonable juror would agree with Petitioner's above cited line of reasoning as to the absence of Petitioner's negligence in claiming Petitioner's completely legal 1986 "unusually historically important" personal property manuscript collection contribution. In addition, the last sentence in the above MRQ quote entitles the Petitioner to have been freed by the 9th Circuit Court of Appeals from the negligence penalty. Black's Law Dictionary defines "clearly erroneous" standard to mean:

. "Clearly erroneous. Findings

when based upon substantial error in proceedings or misapplication of law; or when unsupported by substantial evidence; or contrary to clear weight of evidence or induced by erroneous view of the law."

Petitioner maintains that the Black's Law Dictionary definition of the standard "Clearly erroneous", which the 9th Circuit Court of Appeals professes to use in deciding this penalty issue, gives the Court a multitude of grounds on which, in the interest of justice, the court could and should have allowed Petitioner to prevail and be free of this unjust section 6653(a) penalty. This is especially true since Petitioner's contribution saved the entire free world from economic collapse. Petitioner maintains that this is a graphic example of the malicious, mean spirited, treatment that

the court has heaped on Petitioner throughout these proceedings. Based on this manifestation of malice and other aforementioned similar actions Petitioner will be demanding all possible penalties for malice against the U.S. Courts/U.S.Government during the final settlement of this dispute.

. MRQ: "The tax court affirmed the Commissioner's assessment of a negligence penalty under section 6653(a), based on evidence that Rokke had made a similar contribution in 1973 to the Naval Weapons Center in China Lake. In that case the tax court made clear to Rokke the significance of the fact that he had contributed ordinary income property. From this, the court concluded that Rokke had substantial experience with the tax law in this area and upheld the Commissioner's assessment. There was no clear error in

its ruling."

Petitioner's rebuttal statement: Petitioner's 1973 contribution was indeed a contribution of ordinary income property. It was a contribution of a collection of manuscripts of Petitioner's, partially independently funded, System Engineering Studies which succeeded in identifying the optimum design for the Advanced Medium Range Air to Air Missile System (AMRAAM). Petitioner considered that his finance and banking based 1986 collection of manuscripts contribution was not a contribution of Petitioner's ordinary income property based on Black's Law Dictionary definition of "ordinary income" and other factors. In addition history has proven that Petitioner's 1973 AMRAAM Systems Engineering Study manuscript collection contribution was of "unusual historical importance". An

article from Aviation Week, which Petitioner has entered into evidence in this case, states:

. "AMRAAM, under full scale development for the U.S. Navy and Air Force, is expected to increase the effectiveness of the F-16 by a factor of six." See Appendix 17.

. Most top aerospace engineers would give up the L.H. half of their male gear to increase the effectiveness of a major production fighter, like the F16, by 10 %. Consequently it goes without saying that Petitioner's System Design for the AMRAAM which makes one F-16 with it as effective as six F-16's operating without the AMRAAM is of "unusual hisorical importance" in the aerospace and military science community. Without AMRAAM, for the needed force structure, Petitioner estimates that it would have required the U.S. Government to invest

an additional $143.4 Billion ten year system costs in the required F-16 fighter forces. Petitioner will be claiming a 20% finders fee for this $143.4 Billion in savings since Petitioner's 1973 collection of manuscripts contribution was erroneously disallowed by the tax court since that collection of manuscripts have proven to be of such "unusual historical importance".

Just to cite one more of the plethora of articles Petitioner has collected to substantiate the "unusual historical importance" of Petitioner's 1973 AMRAAM manuscrpit collection contribution the following excerpt from an April 1989 issue of AEROSPACE ENGINEERING is included at this point (see Appendix 16 for the full text of this magazine article):

" ... AMRAAM is the next

generation air-to-air missile for use by the Air Force, Navy, and NATO forces. AMRAAM will be a "launch and leave" radar guided missile, designed to maintain air superiority well into the next century. ..."

Truly Petitoner's 1973 AMRAAM Systems Engineering Study manuscript collection contribution was of "unusual historical importance". This fact qualified that contribution as a valid and fair market value deductible donation for which Petitioner should have been alloved credit. The tax court erred in disalloving Petitioner's 1973 AMRAAM Systems Engineering Study manuscript collection contribution. Therefore the 9th Circuit Court of Appeals erred in citing that contribution as grounds for sanctioning the IRS/Tax Court assessed section 6653(a) penalty against Petitioner's 1986 donation. Petitioner

claims that this is another manifestation of the mean spirited malice against Petitioner that has been perpetrated by the 9th Circuit Court of Appeals. On this basis, combined with the earlier identified instances of the 9th Circuit Court of Appeals acts of malice against Petitioner, Petitioner intends to seek the full penalties for malice in the final settlement of this dispute. Petitioner maintains that there was clear error in the IRS, Tax Court, and 9th Circuit Court of Appeals levy of section 6653(a) sanctions against Petitioner.

Petitioner contests, denies, and categorically rebuts all the content of the following identified sections of the 9th Circuit Court of Appeals August 6, 1993 MEMORANDUM Ruling:

. "IX. Motion for Removal to District Court. ..."

. "V. Costs ..."

. "VI. Motion for Reconsideration ..."

V. Petitioner contests, denies, and rebutts all the content of the August 9, 1993 and the September 27, 1993 9th Circuit Court Orders that were issued in this case.

VI. Petitioner argues that the 9th Circuit Court of Appeals August 6, 1993 MEMORANDUM Ruling as well as the August 9, 1993 plus the September 27, 1993 Orders are unlawful since none of these documents were signed by an officer of the Court.

CONCLUSION

. For the reasons set forth above, a writ of certiorari should issue to review the August 6, 1993 MEMORANDUM Rulings and the August 9, 1993 as well as the September 27, 1993 Orders of the United States Ninth Circuit Court of

Appeals that were issued in this case.

Please see Footnote 1. below.

Respectfully

Submitted,

Dated: 3 NOVEMBER 1993 Donald Leif Rokke, Pro Se

DONALD LEIF ROKKE,

Pro Se, Attorney

for Petitioner

Footnote: 1. If this Court elects not to address the issues presented in this writ at the present time, it is requested that the writ issue and that the matter be remanded to the U.S. Circuit Court for the Ninth Circuit for redetermination in light of the arguments contained in the REASONS FOR GRANTING THE WRIT section of this Petition.

No. _____

IN THE SUPREME

COURT OF THE UNITED STATES

OCTOBER TERM, 1993

DONALD LEIF ROKKE - PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE -

RESPONDENT

PETITON FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

APPENDIX

APPENDIX

TABLE OF CONTENT

Appendix No.	Page No.
1.	1
2.	8
3.	11
4.	31
5.	33
6.	35
7.	48
8.	50
9.	52
10.	53
11.	54
12.	55
13.	56
14.	79
15.	92
16.	93
17.	94

Internal Revenue Service Department of the Treasury

Date: FEB. 05 1990

In Reply Refer to:
AP:SEA:90-D:JLS:CMR
Person to Contact:
JEFFERY I. SHERRILL
Cont. Phone Number:
(206) 442-2382
TIN: 522-20-0564

Tax Year Ended:	Deficiency	Penalty Section 6653(a)	Section 6659
12/31/86	$4621.00	$194.00	$1166.00
12/31/87	$4654.00	$197.00	$1180.00

For returns required to be filed after December 31, 1981, if the penalty under Section 6653(a) applies, the penalty under Section 6653(a)(1)(B) will also apply in an amount to be determined.

Dear Taxpayer:

We have determined that there is a deficiency (increase) in your income tax as shown above. This letter is a NOTICE OF DEFICIENCY sent to you as required by law. The enclosed statement shows how we figured the deficiency.

If you want to contest ths deficiency in court before making any payment, you have 90 days from the above mailing date of this letter (150 days if addressed to you outside of the United States) to file a petition with the United States Tax Court for a redetermination of the deficiency. The petition should be filed with the United States Tax Court, 400 Second Street NW, Washington, D.C. 20217, and the copy of this letter should be attached to the petition. The time in which you must file a petition with the court (90 or

150 days as the case may be) is fixed by law and the Court cannot consider your case if your petition is filed late. If this letter is addressed to both a husband and wife, and both want to petition the Tax Court, both must sign the petition or each must file a separate petition.

If you dispute not more than $10,000 for any one year, a simplified procedure is provided by the Tax Court for small tax cases. You can get information about this procesdure, as well as a petition form you can use, by writing the Clerk of the United States Tax Court at 400 Second Street NW, Washington, D.C. 20217. You should do this promptly if you intend to file a petition with the Tax Court.

If you decide not to file a petition with the Tax Court, we would appreciate it if you would sign and return the

enclosed waiver form. This will permit us to assess the deficiency quickly and will limit the accumulation of interest. The enclosed envelope is for your convenience. If you decide not to sign and return the waiver and you do not timely petition the Tax Court, we will assess and bill you for the deficiency after 90 days from the above mailing date of this letter (150 days if this letter is adddressed to you outside the United States).

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Fred T. Goldberg, Jr.
Commissioner
By
MARVIN WEISBART
Associate Chief,

Appeals Office

Letter 893(RO)(Rev.9-84)

Enclosures

Seattle Appeals Office

915 Second Avenue, Room 2790,

M/S 680

Seattle, Washington 98174

FORM 886-A EXPLANATION OF ITEMS

Name of Taxpayer YEAR/PERIOD ENDED

Billie G. & Donald Rokke 1986 1987

A. Medical/Dental

We have ..... limitations - see exhibits 1A & 1B.

B. Contributions

We have disallowed contributions in the amounts of $20,356 & $22,408 for the tax years 1986 & 1987 respectively as it has not been established that the contributions were made to a qualifing organizatin and you may not deduct the value of your time or services donated to charitable causes. We have allowed amounts verified by you in the amounts of $1,737.75 & $693.00 in the tax years 1986 & 1987 respectively.

You have also been allowed $3,421.92 for your contribution of a study to the United States Government. As this is ordinary income property you must reduct the fair market value of the property given by the gain you would hve received if you had sold it. This contribution claimed of $250,000 for 1986 (with appropriate carryovers to 1987 and beyond) has also been dissallowed as you haven't shown a valid/qualified appraisal for this contribution.

UNITED STATES TAX COURT

WASHINGTON, D.C. 20217

DONALD LEIF ROKKE,	)	
Petitioner	)	Docket No.
	)	6862-90
v.	)	
	)	
COMMISSIONER OF INTERNAL	)	
REVENUE, Respondent	)	

ORDER

On March 20, 1991, petitioner filed a motion to transfer his Tax Court case to the U.S. District Court. This Court denied petitioner's motion on March 22, 1991. On April 2, 1991, petitioner filed a Motion for Reconsideration of this denial on the basis that his constitutionally guaranteed right to a

trial by jury has been violated.

Clearly, there is no merit to petitioner's request for a jury trial in the Tax Court. See Wickwire v. Reinecke, 275 U.S. 101, 105 (1927); Phillips v. Commissioner, 283 U.S. 589, 599 n.9 (1931); Dorl v. Commissioner, 57 T.C. 720, 721-722 (1972), aff'd. 507 F.2d 406 (2nd Cir. 1974). Moreover, once a petitioner files a Tax Court petition, the Tax Court has exclusive jurisdiction and no other court involving the determination of tax due for the year covered by that petiton may be brought by petitioner. Sec. 6512(a), I.R.C. Thus, section 6512(a), I.R.C., operates as a limitation on the general jurisdictional grant of section 1346, I.R.C., which grants the District Court jurisdiction over suits to recover taxes. Premises considered, it is

hereby

ORDERED that petitioner's Motion for Reconsideration is denied.

Joel Gerber

Judge

Dated: Washington, D.C.

April 9, 1991

UNITED STATES TAX COURT

WASHINGTON, D.C. 20217

June 10, 1991

DONALD LEIF ROKKE,	)	
Petitioner	)	Docket No.
	)	6862-90
v.	)	
	)	
COMMISSIONER OF INTERNAL	)	
REVENUE, Respondent	)	

Notice of Service of Transcript

Pursuant to Rule 152(b), Rules of Practice and Procedure of this Court, there is transmitted herewith to petitioner and to the respondent a copy of the pages of the transcript of the trial of the above case before Judge Joel Gerber, at Seattlle, Washington, on May 10, 1991, containing his oral

findings of fact and opinion rendered at the conclusion of the trial.

In accordance with the oral findings of fact and opinion, decision will be entered under Rule 155.

(Order signed by:)

Charles S. Casazza

Clerk of the Court

Served Jun 11 1991

Bench Opinion by Judge Joel Gerber

Docket No. 6862-90 May 10, 1991

THE COURT: The Court has decided to render an oral opinion in this case, and the following represents the Court's oral findings of fact and opinion.

This bench opinion is made pursuant to the authority granted in section 7459(b) of the Internal Revenue Code of 1986, as amended, and in effect for the years under consideration, and under Rule 152 of this Court's Rules of Practice and Procedure.

Respondent in a statutory notice of deficiency determined deficiencies in petitioner's 1986 and 1987 income tax in the amounts of $4,621 and $4,654, respectively. Respondent also determined additions to tax under

section 6653(a)(1)(A) in the amounts of $194 and $197 for 1986 and 1987, respectively, plus fifty percent of the interest due on the redetermined deficiency under section 6653(a)(1)(B). Respondent also determined additions to tax under section 6659 in the amounts of $1,166 and $1,180 for the 1986 and 1987 taxable years, respectively.

After consideration concessions by petitioner, there remains in controversy the question of whether petitioner is entitled to any amount in connection with his claimed contributions of studies or reports he has authored and supplied to the federal government, and whether petitioner is liable for additions to tax.

Petitiioner's legal residence was Seattle, Washington at the time his

petition in this case was filed.

Petitioner authored a study or report he has denominated, I quote, "Collection of data macroeconomics study manuscript(s)," end quote. The document is a compendium of materials from the public domain that petitioner has collected over a twenty-year period concerning national economic conditions and problems. The compendium is tied together by a five-page summary or composite which describes impending economic crisis and certain solutions. During 1986 petitioner transmitted copies of the report to various highly-placed federal government officials, including the President, the Director of the CIA, and the Treasury Secretary. The report was unsolicited by the intended recipients. Petitioner describes the report as one which, I

quote, "[P]resented to the nation's executives the facts that prove that the nations's financial institutions were in debt to such a degree that failure of a preponderance of the industry, organizations, entities was unavoidable." Petitioner also transmitted another report or study to the federal government officials during 1987.

Petitioner contended that the study contributed in 1986 had a cost basis of $250,000, and that the report contributed in 1987 had a cost in excess of $200,000. Petitioner claimed the maximum contribution deduction permissible under section 170, or fifty percent, against his reported income for 1986 and 1987. Respondent examined petitioner's 1986 and 1987 income tax returns and disallowed all of the claimed contributions, with the

exception of his out-of-pocket expenses in the amount of $3,421.92 for the year 1986. No amount was allowed or agreed to by respondent for 1987.

Petitioner bears the burden of showing respondent's determination to be in error. Welch v. Helvering, 290 U.S. 111 (1933); Rule 142(a), Tax Court Rules of Practice and Procedure.

Respondent does not dispute that petitioner authored the reports and transmitted them to the federal government. Instead, respondent argues that section 170(e) provides that in the case of "ordinary income property" the amount of charitable contribution of property is to be reduced by the amount of gain which would not have been long-term capital gain if the property contributed had been sold by the

taxpayer at its fair market value. Under section 1.170A-4(b)(1), Income Tax Regulations, ordinary income property includes manuscript, letter, or memorandum prepared by the doner. If we should decide that the reports were capital gains property in petitioner's hands, then respondent argues that petitioner has not established the fair market value of the reports and that the claimed contributions hould be disallowed on that basis. Respondent also points out that section 1221 provides that the term "capital asset" does not include a copyright, literary, musical, artistic composition, letter, memorandum, or similar property.

Petitioner contends that if respondent's interpretation of the statutes and regulations is correct, that the United States Government has

been unjustly enriched, and that he seeks a counterclaim or offset for the difference between the amount agreed to by respondent (the out-of-pocket expenses) and the alleged $250,000 fair market value.

We find respondent's position to be correct and hold that petitioner is limited to a deduction of $3,421.92 for his outof-pocket expenses in the 1986 taxable year.

It is further held that petitioner is not entitled to any amount of the claimed contribution for the 1987 taxable year.

Section 170, Internal Revenue Code of 1986, allows as a deduction any charitable contribution. Under section 170(c), a "charitable

contribution" is defined to be a contribution or gift to or for the use of certain specified classes of organizations. The United States of America is one such recipient to which contributions within the meaning of section 170 may be made. See section 170(c)(1).

Section 170(e) concerns contributions of certain types of property and limits contributions to the fair market value of the property which is a capital asset in the hands of the donor or to, essentially, the out-of-pocket expenditures if the property is ordinary income property in the hands of the donor. In the setting of this case, we must essentially determine whether the contribution was a gift of services or of property by petitioner. See Goss v. Commissioner, 59 T.C. 594 at page 596

(1973).

By way of analogy, petitioner contends that his report is like a personal letter of a famous person which has value because of its historical importance rather than because of the author's services or business activity. Although petitioner admits that he is not a famous person, he believes that his report played a significant role in our nation's history and is similar to a letter written by a famous person. Petitioner also argues that he is an engineer and not an economist, and that his report concerns economic principles. Petitioner argues that the report is, therefore, not a rendering of services for which he would have received ordinary income within the meaning of secton 170. In support of his position, petitioner cites two cases and a revenue

ruling, as follows: Goss v. Commissioner, supra; Jarre v. Commissioner, 64 T.C., page 183 (1975); and Revenue Ruling 84-1, to be found at 84-1 CB, page 39.

The Goss case is the most closely aligned to the facts of this case. In Goss, the taxpayer wrote two essays related to the interests of the National Council of Negro Women and gifted them to that organization. In holding that the gift was one of property and not of services, this Court relied upon the case of Holmes, v. Commissioner at 57 T.C., page 430 (1971). In Holmes, the taxpayer had donated artistic property (films) to charitable organizations. The focus there was upon the fact that the films were separate property, even though they had been created by the taxpayer's services. The same basic

analysis was employed in the Goss case.

Here, petitioner accumulated related materials which were in the public domain. At some point in time, apparently near the contribution of the materials, petitioner decided that the materials, along with his summary and suggestions (contained in the five-page letter), would be helpful to federal government officials to avert financial crises.

We do not consider petitoner's report to be separate property or artistic property in the same manner as the property referred to in the cases that he cited. Instead, petitioner's contribution here is an offer of advice or a suggestion to his government, essentially in letter form, and supported by a compendium of materials

that he had accumulated over a period of time. Even though petitoner may not see himself as one who could professionally hold himself out or one who sells his services as an economic professional, we find that he was supplying his services to the government. Respondent has allowed petitionere his our-of-pocket expenses cncerning the report, and petitoner is not entitled to deduct an additinal deduction for his 1986 or 1987 taxable years.

Due to our holding, there is no need to decide the value, if any, of petitioner's report. Petitioner, in claiming a deduction based on value in excess of $200,000, used a comparative analysis. He suggests that the federal government has paid substantialy larger sums for studies and reports concerning significantly less important matters

that tne collapse of the national economy. Although petitioner's point is well taken, the government did not contract with petitioner to provide the advice. And the report does not have inherent value as property, but it is petitioner's idea or conceptual offering that may have had the value. The value of the concept, if any, was in the petitioner's rendering of the service by communicating the idea to the government. Petitioner is to be commended for his attempt to assist his government at a time when he sensed impending economic crises, but Congress did not provide for respondent in this type of situation.

At trial, petitioner sought to make a counterclaim against the government. Petitioner argued, if we decide that he was not entitled to a contribution for

the amount he claimed, then the government received the benefits and owed him for the idea. Concerning petitioner's counterclaim, we need not address that issue because our jurisdiction is statutorily limited to those matters enumerated in Title 26, United States Code, and does not include claims against the United States of America being pursued under Title 28, United States Code, or any other statutorily-authorized claims against the sovereign. See Sections 7441 and 7442, Internal Revenue Code of 1986, and the discussion in Oppenheimer v. Commissioner, T.C. Memo 1986-537, and Lewicki v. Commissioner, T.C. Memo 1974-86. Accordingly, we are without authority or jurisdiction to consider or grant petitioner's counterclaim.

We note that we have also denied

petitioner's request for a jury trial and/or removal to the United States District Court by a pretrial order. See Masat v. Commissioner, 784 F.2d 573 at page 577 (5th Cir., 1986).

Section 6653(a)(1)(A) and section 6653(a)(1)(B) provide for the addition to tax if any part of the underpayment is due to negligence or disregard of the rules and regulations. Negligence is a lack of due care or failure to do what a reasonable and ordinary prudent person would do under the circumstances. Neely v. Commissioner, 85 T.C. 934 at page 947 (1985).

Respondent's determination of negligence is presumed to be correct, and the taxpayer has the burden of proving the determination to be erroneous. Luman v. Commissioner, 79 T.C. 846 at paages 860

and 861 (1982); and Rule 142(a) of this Court's Rules of Practice and Procedure.

Petitioner had become knowledgeable about claiming contributions of authored materials. He was audited, and respondent disallowed a similar contribution in connection with an audit of his 1973 taxable year. In spite of the audit and disallowance of the 1973 cntribution, petitioner has again claimed a similar deduction in 1986 and 1987. Petitioner has not shown a change in the statutes or case law.

Although he attempted to characterize the subject of his contribution as a contribution of property rather than services, we find that the 1986 report was not property and, accordingly, not subject to capital gains.

We further find petitioner liable for the additions to tax under sections 6653(a)(1)(A) and (B) for his 1986 and 1987 taxable years.

Finally, respondent determined that petitioner was liable for an addition to tax under section 6659, which relates to underpayment of tax attributable to a valuation overstatement. In the Setting of this case, we did not disallow petitioner's contibution deduction in connection with or consider the question of valuation. Because our holding is not based upon an overvaluation under section 6659, that section is not applicable. See McCrary v. Commissioner, 92 T.C., Page 827 (1989); and Todd v. Commissioner, 862 F.2d, page 540 (5th Cir., 1988).

And that is the conclusion of this

the interest of justice as well as gross vilostion of the taxpayers Constitutional Rights. Review of this case by the U.S. Supreme Court is urgently required to correct this chronic, cancerous, and disgraceful practices of the IRS and the U.S. Appellate Courts.

Introduction:

In this section we will be dealing with a number of Internal Revenue Code Statutes, IRS Rules and Regulations, IRS Publications, Amendments of the United States Constitution and the Rights they Guarantee, Common Law, Case Made Law, Federal Rules of Civil Appellate Procedure, appropriate dictionary legal definitions, and the United States Tax Court Rules of Practice and Procedure requirements as they apply to the 9th Circuit Court of Appeals, August 6, 1993

MEMORANDUM Ruling which was unsigned by the Judges plus unsigned August 9 as well as September 27, 1993 9th Circuit Court Orders.

I. First it should be stated that justice has not been served by the IRS during the processing of this case. This is true with regard to the IRS because there were many errors of fact, errors of law, intentional distortions, and malicious attempts to discredit and/or diminish Petitioner's case which were included in the February 5, 1990 IRS final Tax Deficiency Finding. See Appendix 1 for a copy of that document. The above identified errors and misdeeds are identifiable by comparing the content of Appendix 1 with the above STATEMENT OF THE CASE.

II. Second it should be stated that justice has not been served by the Tax Court during the processing of this

case. This is true with regard to the Tax Court because there were many errors of fact, errors of law, intentional distortions, and malicious attempts to discredit and/or diminish Petitioner's case which were included in the May 10, 1991 Tax Court Bench Opinion and Oral Finding of Facts. See Appendix 3 for a copy of that document. The above identified errors and misdeeds are identifiable by comparing the content of Appendix 3 with the above STATEMENT OF THE CASE.

III. Third it should be pointed out that the Justice Department Defaulted on their case by admitting, via devault, a preponderance of Petitioner's 9th Circuit Court of Appeals Brief. This default came about by the Justice Department's failure to deny or rebutt the content of major elements of Petitioner's 9th Circuit Court of

Appeals Brief in the Justic Department's Answer Brief. The Justice Department's default on the case was specified, as follows, and pointed out in Petitioner's 9th Circuit Court of Appeals Reply Brief:

"STATEMENT OF ISSUES"

"I. U.S. JUSTICE DEPARTMENT DEFAULTS:"

"1. U.S. Justice Department's Answer Brief only responded to Appellant's Statement of the Issues Items Numbered 1, 3, 7 and 8. Consequently Appellant's Statement of the Issues Items Numbered 2, 4, 5, 6, 9, 10 and 11 are considered to be admitted by the U.S. Justice Department by default."

"2. U.S. Justice Department's Answer Brief only responded to Appellant's Statement of the Case Items Numbered 1, 4, 5, 6, 7, 9, lines 1 thru 3 of 10, and 11. Consequently Appellant's Statement of the Case Items Numbered 2, 3, 8,

lines 4 and on of Item 10, 12, 13, 14, 15, 16, and 17 are considered to be admitted by the U.S. Justice Department by default."

"3. U.S. Justice Department's Answer Brief only responded to Appellant's Arguments Numbered 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, and 17. Consequently Appellant's Arguments Numbered 8, 9, 13, 14, 15, 16, 18, and 19 are considered to be admitted by the U.S. Justice Department by default."

IV. Fourth it should be stated that justice has not been served by the IRS, the Tax Court or at the 9th Circuit Court of Appeals level. This is true with regard to the 9th Circuit Court of Appeals because there were many errors of fact, errors of law, intentional distortions, and malicious attempts to discredit and/or diminish Petitioner's case which were included in the August

6, 1993 9th Circuit Court of Appeals (UNSIGNED AND THEREFORE UNLAWLFUL) MEMORANDUM Ruling. See Appendix 6 for a copy of that MEMORANDUM. The following quotes from that MEMORANDUM Ruling are contested, denied, or rebutted by the preceeding STATEMENT OF THE CASE section of this Petition or by Petitioner's accompanying rebuttal comments below:

. MEMORANDUM Ruling Quote (MRQ): "Rokke compiled a document entitled ""Macro Economics Study Collection of Data."" It consisted of his five-page analysis and appended materials (Primarily magazine and newspaper clippings)."

Petitioner's rebuttal statement: The above "and appended materials (magazine and newspaper clippings comment)." is a complete fiction.

. MRQ: "Rokke appealed to the tax court."

Petitioner's rebuttal statement: The above statement is O.K. as far as it goes but it fails to mention the gross amount of resources Petitioner has been forced to expand via Motion for Transfer/Remand of the case to the U.S. District Court to implement Petitioner's demanded jury trial based on the common law Unjust Enrichment aspects of this case and the jury trial guarantees for common law cases which is contained in Amendment VII of the U.S. Constitution.

. MRQ: "The Tax Court held that Rokke's contribution was a service. ...."

Petitioner's rebuttal statement: This is a nice benign statement but it fails to mention the fact that the issues of services was only raised by the Tax Court Judge four days after the trial had been completed. This changing of the "charges" after the trial denied

Petitioner his rights to an adequate opportunity to prepare his case against the "contribution was a contribution of services" charges and present his defense on this issue during the trial. This changing of the "charges" after the trial denied Petitioner his rights to Due Process and Equal Protection of the Laws as guaranteed by Amendment XIV of the U.S. Constitution.

. The IRS, during its pre-trial handling of this case and during the trial, maintained that Rokke's contribution was being denied because it was considered, by the IRS, to be a contribution of "ordinary income property". Four days after the trial was over and the litigants had departed the Tax Court Judge decided that Rokke's contribution should be denied on the basis that it was a contribution of "services" instead of a contribution of

"ordinary income property". ...."

Mr. Rokke consistently argued that the contribution was not a donation of "ordinary income property" because Black's Law Dictionary states that:

"Ordinary Income. Term embraces income from regular sources such as wages, commissions, interest, dividends and the like." See Appendix 11.

Mr. Rokke appropriately entered into evidence his life long collection of W2 and IRS 1040 Tax Return Copies which proved that he had spent his entire pre-retirement career employed as a Professional Engineer with companies in the Aerospace and Petro-Chemical industry. Rokke argued that he had never earned one cent of "ordinary income" from employment in the banking, savings and loan, or other aspects of the financial industry. Rokke argued that the Collection of Data, Manuscripts

that he contributed to President Reagan in 1986 was a contribution of Rokke's Personal Property, Collection of Data, Manuscripts which IRS Publication 544 Sales and Other Disposition of Assets clearly indicates that Petitioner could deduct at their fair market value. This was especially reinforced by a paragraph in IRS Publication 561 Determining the Value of Donated Property which states in part: "Manuscripts, autographs, diaries, and similar items that are handwritten, or at least signed by famous people, often are in demand and are valuable. The writings of unknowns also may be of value if they are of unusual historical or literary importance." See Appendix 12 for a full quote of this Publication 561 paragraph. Petitioner argues that his contributed manuscripts are of "unusual historical importance" because

the U.S. Government utilized the national economic crisis analysis and the national entity survival scenario, contained therein, to cope with the "1986 and on" Banking plus S&L industry debt crisis. Petitioner's national entity survival scenario enabled the U.S. Government to solve the national economic crisis without collapse of the free world economies or run away inflation. Petitioner alleges that the above cited "objected to" sentence of the August 6, 1993 MEMORANDUM Ruling was constructed to intentionally mask the fact that the Tax Court Judge changed the grounds for disallowing Petitioners contribution after the trial was over instead of during the trial as the "objected to" sentence would imply. Petitioner argues that this is one specific example of the malice that the Judges of the 9th Circuit Court of

Appeals demonstrated against Petitioner in a consistent effort to damage and/or diminish Petitioner's case on appeal.

In the "II. Charitable Contribution Deduction" section of the 9th Circuit - Court's August 6, 1993 MEMORANDUM Ruling there is an obvious misinterpretation and misapplication of the laws that are relevant to this case. This mis-interpretation and misapplication is identified in the last three sentences of the first paragraph of MEMORANDUM Section II quoted below:

MRQ: "He (Rokke) argues that the tax court erred in characterizing his constribution as a service. He believes that it was a capital asset. We affirm the tax court on other grounds."

Petitioner's rebuttal statement: Petitioner maintains that this is a major error of fact and law as well as a

major misapplication of the law. Petitioner maintains that this is a situation in which the Tax Code is chronically and erroneously misinterpreted and misapplied. This came about via the error of utilizing IRC section 170 to define "ordinary income property" instead of using Black's Law Dictionary legal definition of that category of property as discussed above. This is coupled by the fact that Rokke's contribution was a legitimate contribution for which he could deduct its fair market value by virtue of the fact that it was of "unusual historical importance". A contribution of ordinary income property of "unusual historical importance" is deductible at its fair market value as sanctioned by IRS Publication 561 Determining the Value of Donated Property, see Appendix 12, as well as in the case of Jarre v.

Commissioner, 64 T.C. 183 (1975), see Appendix 13, and Goss v. Commissioner, 59 T.C. 594 at page 596, see Appendix 14.

. MRQ: "The contribution was neither a service, nor a capital asset, as Rokke Contends. He contributed Ordinary income property, for which he is entitled to deduct, at most, his cost basis. The Commissioner correctly limited Rokke's deduction."

Petitioner's rebuttal statement: The foregoing is a case in point of the chronic misinterpretation and mis-application of the Tax Laws in cases inolving contributions of property. The IRS and the Tax Court self-servingly indulge a highly unlawful definitin of "ordinary income property" to fill their coffers at tax payers expense. In this case the property Petitioner contributed could in no way be considered property of the type from which Petitioner ever

the clearly erroneous standard. Hildebrand v. Commissioner, 967 F.2d 350, 353 (9th Cir. 1992).

The tax court affirmed the Commissioner's assessment of a negligence penalty under section 6653(a), based on evidence that Rokke had a similar contribution in 1973 to the Naval Weapons Center in China Lake. In that case the tax court made clear to Rokke the significance of the fact that he had contributed ordinary income property. From this, the court concluded that Rokke had substantial experience with the tax law in this area and upheld the Commissioner's assessment. There was no clear errror in its ruling.

IV. Motion for Removal to District Court

Rokke contends that the tax court erred in denying his motion for removal of his case to the district court. Rokke seems to believe that he is constitutionally entitled to either a jury trial in the tax court or removal to the district court. He is wrong. We review removal issued de novo. Emrich v. Touche Ross & Co, 846 F.2d 1190, 1194 (9th Cir. 1988).

There is no right to a jury trial in tax court. Masat v. Commissioner, 784 F.2d 573, 577 (5th Cir. 1986). Also, once a taxpayer seeks relief in a tax court, he loses his right to go to the district court. I.R.C. section 6512(a); First Nat'l Bank of Chicago v. United States, 792 F.2d 954, 956 (9th Cir. 1986), cert. denied, 479 U.S. 1064 (1987).

V. Costs

Rokke contends that he is entitled to costs because, "the appeals process is so complicated and such a vexatious as well as resource consuming, high stress, traumatic experience". His contention is meritless.

Rokke is not entitled to costs. He was not a prevailing party.

VI. Motion for Reconsideration

Rokke contends that the tax court erred in denying, without explanation, his motion for reconsideration. He argues that this rendered him unable to, "defend against this contribution of services allegation in preparation for and during the trial". His contention

is meritless. We review such motions for abuse of discretion. Fuller v. M.G. Jewelry, 950 F.2d 1437, 1442 (9th Cir. 1991).

Reconsideration is not a matter of right, but is discretionary. Id. at 1442. Denial of such a motion cannot, by itself, constitute a denial of due process.

There was no abuse of discretion.

We affirm the tax court, but reject its holding that Rokke's contribution was a service.

Stamped: Aug 06 1993

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DONALD LEIF ROKKE,	)	
Petitioner-Appellant,	)	No. 91-70722
	)	
v.	)	Tax Ct. No.
	)	6862-90
COMMISSIONER OF INTERNAL	)	
REVENUE	)	ORDER
Respondent-Appellee	)	
----------	)	

Before: WRIGHT, BEEZER, AND HALL,

Circuit Judges.

The Appellant filed with the deputy clerk in Seattle on August 4, 1993, four documents.

IT IS ORDERED that:

the motion for remand to the district

court for jury trial is DENIED;

the motion to reconsider the denial of a continuance is DENIED;

the motion for leave to file additional citations is DENIED and the additional citations memorandum will be rejected and not filed by the Clerk.

THIS DOCUMENT WAS SERVED ON PETITIONER

UNSIGNED

Stamped August 9, 1993

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DONALD LEIF ROKKE,	)	
Petitioner-Appellant,	)	No. 91-70722
	)	Tax Ct. No.
v.	)	6862-90
	)	
COMMISSIONER OF INTERNAL REVENUE	)	ORDER
Respondent-Appellee	)	
----------	)	

Before: WRIGHT, BEEZER, AND HALL,
Circuit Judges

The panel has voted to deny the petition for rehearing, and Judges Beezer and Hall have voted to reject the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35(b).

The petition for rehearing is DENIED and the suggestion for a rehearing enbanc is REJECTED.

THIS DOCUMENT WAS SERVED ON PETITIONER UNSIGNED

Stamped Sep 27 1993

UNITED STATES CONSTITUTION

AMENDMENT VII [1791]

. In Suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved, and no act tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of common law.

UNITED STATES CONSTITUTION

AMENDMENT XIV [1868]

. Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

BLACK'S LAW DICTIONARY

Definition:

. "Ordinary income. For income tax purposes reportable income not qualifying as capital gains. Term used to describe income taxed at ordinary rates in contrast to income taxed at the more advantageous rates of capital gains. Term embraces income from regular sources such as wages, commissions, interest, dividends and the like.

Where "regular" is defined as:

. "Regular. Conformable to law. Steady or uniform in course, practice, or occurrence; not subject to unexplained or irrational variations. Usual, customary or general. ..."

IRS PUBLICATION 561 DETERMINING THE VALUE OF DONATED PROPERTY

. "Manscripts, autographs, diaries, and similar items that are handwritten, or at least signed by famous people, ofter are in demand and are valuable. The writings of unknowns also may be of value if they are of unusual historical or literary importance. Determining the value of such material is difficult. There may be a great difference in value between two diaries that were kept by a famous person--one kept furing childhood and the other during an important period in his or her life. The appraiser determines a value in these cases by applying knowledge and judgment to factors such as comparable sales and conditions."

MAURICE JARRE AND MARY LOUISE JARRE, PETITIONERS V. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

Docket No. 6546-73. Filed May 7, 1975

Petitioner Maurice Jarre contributed certain of his original music manuscripts and other related materials, such as the score of "Dr. Zhivago," to the University of Southern California in 1967 and 1968. - Held, the fair market value of said gifts determined.

Eli Blumenfeld, for the petitioner.

Stephen W. Simpson and Jonathan A. Brod, for the respondent.

STERRETT, Judge: The respondent determined deficiencies of $28,116 and $34,028 in the Federal income taxes of petitioners for the calendar years 1967

and 1968, respectively. The sole issue presented requires our determination of the fair market value of certain original music manuscripts and related material contributed by petitioner Maurice Jarre to the University of Southern California in 1967 and 1968 for purposes of computing the amount of deductions for charitable contributions to which petitioners are entitled under section 170, I.R.C..

FINDING OF FACT

. Some of the facts have been stipulated and are so found. The stipulation of facts, together with the exhibits attached thereto, are incorporated herein by this reference.

. Petitioners are husband and wife whose legal residence at the time of filing the petition was in Beverly

Hills, Calif. They filed joint Federal income tax returns for the calendar years 1967 and 1968 with the District Director of Internal Revenue at Los Angeles, Calif.

. Petitioner Maurice Jarre (hereinafter Jarre) is a music composer and conductor of international reputation. Jarre has been a composer and conductor for some 25 to 28 years. He began his music career in Lyons, France, and then studied in Paris at the National Conservatory Music. Jarre, along with Pierre boulez (currently the music director of the New York Philharmonic Orchestra), then became the music adviser to the newly formed Jean-Louis Barrault Theater Co. in France where he remained for 4 years. Jarre subsequently became music director and conductor for the French National Theatre in 1951, positions he held for

12 years. During this period petitioner was responsible for the music budget, composed the music for all plays, including "Macbeth," "Oedipus," and "The Hairy Ape," and conducted the orchestra for all plays and concerts. He also composed music for French films, radio broadcasts, a ballet, and television program.

. In 1964 Jarre moved to and became a permanent resident of the United States. He has since composed music for approximately 50 American films. Some of Jarre's scores for American films include "Lawrence of Arabia," "Topaz," "Ryan's Daughter," "Dr. Zhivago," "Is Paris Burning?," "Grand Prix," "The Longest Day," and "Night of the Generals." Jarre generally prepares all elements, including arrangements and orchestration, of the film scores he composes and sometimes conducts the

music for the sound track. Jarre has a classical music background and has written symphonic music, ballet and opera music, and also electronnic music called musique concrete. He has conducted well-known symphony orchestras in a number of foreign nations. His most publicized success, however, has come in the field of popular culture music and, more particularly, in music for film. Jarre is considered by his peers to be one of the top 10 composers of music for film in the world and he is one of the most sought after composers in the film industry.

. Jarre is a member of the American Society of Composers, Authors and Publishers (ASCAP) as a publisher. He is also a member in the highest rank of the Society of Authors, Composers, and Publishers (SACEM) as a composer. An individual is not permitted to be a

member of both organizations in the same category. Jarre has served on a number of committees and advisory groups dealing with music both in France and in the United States. There is a large number of books and magazines containing biographical material about Jarre and his career in music of which a sampling of some 53 (American and foreign) was placed in evidence in this proceeding. In addition, a good deal of his music, both American and foreign, has been recorded.

Jarre has won two Academy Awards (for the scores for "Lawrence of Arabia" and "Dr. Zhivago"), a Golden Globe award, and has received three other Academy Award nominations. He has also received a number of awards of comparable importance in France (such as the chevalier des Arts et Lettres), Germany, England, and Italy.

. In his capacity as a composer, Jarre has created numerous original works, some of which have been contributed to the University of Southern California and the University of Wyoming after solicitation of his material by those schools. In response to requests, in 1967 and 1968 Jarre contributed certain original music manuscripts and other related material to the University of Southern California. The following property rights were conveyed as part of the 1967 and 1968 gifts: all copyrights; rights of publication in book form; rights of serialization; magazine and newspaper rights; reprint rights; and book club rights or dramaatization rights.

. The 1967 and 1968 gifts include the music manuscripts and related material to some 14 of Jarre's American films, 10 French films, 10 plays, 2

ballets, and a number of French radio and television productions and consist of over 4,000 pages. The material consists mainly of Jarre's original and generally complete workings (as opposed to finished) manuscripts of musical scores and sketches (some several hundred pages long) writtten in his own hand, some signed on a number of pages, and with annotations. Music notes, click track timing sheets, and cue sheets, generally annotated and sometimes completely in Jarres hand, and some photocopies and typescripts of scores are also included. Among the contributed scores for American films were those from "Grand Prix," "Dr. Zhivago" (the music of which sold some 14 million tapes and records and some 1,500,000 lead sheets), "Nights of the Generals," "Behold a Pale Horse," "Is Paris Burning?" and "Gambit." The

condition of the donated material was very good.

. Prior to and including the years in issue none of Jarre's original manuscripts or copies thereof had come on the market. Except for a few one page fair copies of music from "Ryan's Daughter," "Dr. Zhivago," and "Lawrence of Arabia" which were sold to dealers for $50 to $75 in 1974 and three one-page fair copies of music from "Dr. Zhivago," two of which were sold to collectors for $300 and $325, respectively, in 1974 and one for $75 in 1972 none of Jarre's work has come on the market. A fair copy is a copy in the composer's own handwriting.

. During the years in issue, Jarre retained one Milton Luboviski (hereinafter Luboviski), the proprietor of Larry Edmons Book Shop, to appraise his donated material. Luboviski, who deals in cinema and theater material,

appraised the donated material at the time of contributions. His determinations of the fair market value of the donated material for 1967 and 1968 were $54,200 and $61,900. In 1971, Jarre retained one Charles Sachs, proprietor of the Scriptorium, to appraise his 1967 and 1968 gifts. Sachs' appraisal found the fair market values, as of the dates of contribution, of Jarre's materials contributed in 1967 and 1968 to be $61,996 and $35,918, respectively.

. Respondent retained one Doris Harris, the proprietress of Doris Harris Autographs, to value the contributed material. In 1970 she appraised the 1967 and 1968 gifts at $5,875 and $2,775, respectively, as of the dates of contribution. On learning that some of the handwriting she attributed to a coopyist was actually

that of Jarre and upon a number of the donated manuscripts becoming availablle for her inspection, which were not at the University of Southern California at the time of her original appraisals. Harris reappraised the 1967 and 1968 material in issue, as of the dates of contribution, at $7,615 and $4,915, respectively.

. In their 1967 and 1968 income tax returns, petitioners claimed deductions of $54,200 and $61,900, respectively, for the contributions in question made by Jarre. In his notice of deficiency respondent disalloved the claimed deductions upon his determination that petitioners did not own the donated material, a point now conceded by respondent. In the notice of deficiency respondent alternatively determiined that, in the event ownership of the donated material is established, the

deductions for the years 1967 and 1968 would be limited by the fair market values thereof to $4,875 and $2,775, respectively. Respondent now has conceded that petitioners are entitled to deductions of $7,615 for 1967 and $4,915 for 1968, rather than the amounts stated in the notice of deficiency, but contends that no larger deductions are allowable.

OPINION

The sole issue for decision relates to the amount of the deductions for purposes of section 170 to which petitioners are entitled for the contributions of original music manuscripts and other relateld material to the University of Southern California in 1967 and 1968. There being no issue as to the other requirements of section

170, the only question presented is the proper amount of the deductions, or the fair market value of the contributed property.

. With respect to contributions of property, section 1.170-1(c)(1) of the Income Tax Regs. provided in part:

(c)***(1) General rules. If a contribution is made in property other than money, the amount of the deducton is determined by the fair market value of the property at the time of the contribution. The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knoveledge of relevant facts. ***

. Petitioners contend that the fair

market values ofthe 1967 and 1968 gifts were $54,200 and $61,900, respectively, which amounts they deducted on their appropriate tax returns. It is respondent's position that the fair market values of the donated prpoerty were $7,615 for 1967 and $4,915 for 1968.

. The question of fair market value is one of fact which must be resolved from consideration of all the relevant evidence in the record. Philip Kaplan, 43 T.C. 663, 665 (1965). Both parties produced voluminous testimony, which we will not recount, of experts and others dealing in or familiar with property of the type in question in addition to a number of exhibits including the appraisal reports of the expert witnesses. In the interest of brevity, we have summarized only the highlights of such evidence in our Findings of

Fact.

. In resolving the issue of the fair market value of the gifts of music manuscripts and related material, we believe the following factors are included among those elements which we must, and have, considered in determination of the question at hand: the composers standing in his field and popularity of his works in general; the critical acclaim and popular appeal of the particular works contributed; the relative place and importance of the contributed works in the composers career; the condition and content of the contributed works; whether the contributed works are originals, fair copies, or photocopies, are written in the composer's own hand, are signed, or are in ink, pencil or typed; the length of the individuall contributed works and the sizes of the pages containing them;

whether the mental processes of the composer are shown (i.e., working versus souvenir or finished manuscripts), including annotations; the demand in the marketplace for the type of works contributed and for the particular works contributed; the associative character of the contributed works (such as the film, its actors and actresses, its director, or its subject); the quantity, or conversely the rarity, of the contributed material (including whether the composer is dead or alive); and the length of time necessary to sell the contributed works.

In weighing the testimony and appraisals of the expert witnesses in this case, we have considered as important their demonstrated qualification to form an opinion, their familiarity with the background and relative place of Jarre in his field,

their choices of comparable sales, their familiarity and contact with the potential market for the contributed material, and their knowledge of the material. We also have considered the expert witnesses' relative expertise as judged and observed by us, the time spent on and thoroughness of their appraisals, and their knowledge of the particular field both before and after research. See Keystone Wood Products Co., 19 B.T.A. 1116. 1121-1122 (1930). affd. 66 F.2d 258 (2nd Cir. 1933).

. In this respect, we note that the testimony of all three expert witnesses had instances of inconsistent, vague, and conclusionary statements. We think it important that petitioner's experts, especially Luboviski, deal daily in cinema memorabelia, while respondent's expert does not. Clearly, this does not make respondent's expert incapable of

researching and evaluating the market for film music, but it is a factor we must consider in weighing respondent's expert's testimony. In fact, respondent's expert admitted she sends customers desiring cinema material to Luboviski because he deals in such items while she generaly does not. In addition, we think it sigsnificant that respondent's expert placed a great deal of significance on Jarre's absence from a 1959 edition book discussion 20 composers, despite the fact that Jarre's success and recognition, at lealst in the United States, came in the 1960's for film music. Furthermore, we believe the record shows that respondent's expert was not fully aware of Jarre's foreign accomplishments and reputation.

. Respondent does not claim that Jarre is unknown among his professional associates. Respondent readily admits

that Jarre is one of the top 10 composers of film music. Respondent also recognizes that the condition of the contributed materials is very good and, as his expert stated, their content and appearance is attractive and interesting. Nor does respondent contend that Jarrre's contributed material has no value. Indeed, it would be odd for the University of Southern California to solicit Jarres works if they had no value. Rather, respondent's position, apart from attacking petitioner's experts' appraisal, is that there is a very small, if any, market for the type of material donated or for Jarre's material in particular. As grounds for his argument respondent points to the lack of recorded sales of whole film scores, and the lack of inquiries received by the witnesses in this trial concerning sales of Jarre's

or anyone else's film scores, and Jarre's lack of name recognition among other than his professional associates. In addition, respondent asserts that the depressing effect on the market of the volume of Jarre's contributed material must be considered.

. With respondent's latter contention, we agree. Estate of David Smith, 57 T.C. 650, 656-658 (1972), affd. 510 F.2d 479 (2nd Cir. 1975). However, with respect to respondents first contention, the fact that there may be a limited market does not, in our opinion, prevent the contributed property from having substantial value. See Publicker v. Commissioner, 206 F.2d 250 (3rd Cir. 1953), affd. T.C. Memo. 1952-163, cert. denied 346 U.S. 924 (1954); George P. Fisher, Executor, 3 B.T.A. 679 (1926). It is however, a factor to consider. Estate of David Smith, 57 T.C. at 655.

. Considering the evidence of the instant case we do believe respondent has shown a somewhat limited market for lengthy and complete music manuscripts of film composers. There was testimony from petitioners' witnesses that they could recall only one or two sales of and few, if any, inquiries about such material. On the other hand, we think the longer manuscripts could, in some instances, be broken down into shorter, more salable units, if necessary. There was evidence submitted of a number of sales at substantial prices of short or one-page music manuscripts by popular culture composers with whom we think Jarre is comparable. In addition, we note that several of Jarres one-page fair copies of his music (admittedly worth less than original manuscripts) were sold between 1972 and 1974, some to dealers

and some to collectors, for substantial prices.

. As for respondent's claim that Jarre has no name recognition except among his professional associates, we express no opinion except to state that we believe such fact, if true, to be of little value. We cannot doubt that Jarre's music for films such as "Dr. Zhivago" (music of which sold some 14 million tapes and records) or "Lawrence of Arabia" is itself generally recognized and sought by the public. This in turn, we believe, adds to the desirability, and hence value, of his less familiar works. Further, we think Jarre's premier role in the field of writing music for films has been amply demonstrated.

. After carefully considering all the evidence contained in the record, and with the usual obeisances to the

vagaries of the judgment required by this case, we conclude, and find as a fact, that Jarres 1967 and 1968 gifts in question had fair market values at the time of contribution, of $45,000 and $31,000.

Decision will be entered under Rule 155.

BERNARD GOSS AND NANCY C. GOSS, PETITIONERS V. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket No. 3337-70.

Filed January 30, 1973.

1. Held, taxpayer is entitled to a deduction under sec. 170, I.R.C. 1954, for his donation of two essays of his own creation to a qualified charity; the donation of the essays constituted a contribution of property, and not of services. Held, further, the essays had a fair market value of $500.

2. Held, the Commissioner properly disallowed deductions for alleged business travel expenditures because taxpayer did not comply with all the substantiation requirements of sec. 274(d), I.R.C. 1954.

George N. Plastiras, for the petitioner.

G. Phil Harney, for the respondent.

Wiles, Judge: Respondent has determined a deficiency in petitioner's income tax of $1,483.27 for taxable year 1967. The issue for decision are:

(1) Whether petitioners are entitled to a charitable deduction for petitioner's donation of two essays to a certain charity, and if so, what the fair market value of those essays was at the time of donation.

(2) Whether certain expenses incurred by petitioner for travel in 1967 are deductible as ordinary and necessary business expenses.

FINDINGS OF FACT

Some of the facts have been stipulated and are found accordingly.

Petitioners are Bernard Goss (hereinafter referred to as petitoner) and Nancy C. Goss, husband and wife, who resided in Little Rock, Ark., at the time of the filing of the petition herein. They filed a joint Federal income tax return for the taxable year 1967 with the district director of internal revenue in Little Rock, Ark.

During 1960 and 1961 petitioner was employed by the Federal Reserve Bank of Dallas, Tex., as an industrial economist. From 1963 to 1966 petitioner was an assistant professor of economics, finance, and marketing at St. Edward's University, Austin, Tex. From June 1966 to January 29, 1967, petitioner was employed as a technical assistance officer and economist at the Austin, Tex., regional office of the Economic

Development Administration. Throughout the remainder of 1967 petitioner was employed as an economic research specialist with the Ozark Regional Commission, Little Rock, Ark..

On November 10, 1967, petitioner made a gift of two essays to the National Council of Negro Women, a qualified charitable organization. The petitioner prepared these two essays, which are entitled "The Negro Woman's Income Gap" and "Urban Spatial Economic/Social Inter-Relationships." The purpose of these essays was to provide the National Council of Negro Women with policies and objectives regarding the creation of adequate and positive economic opportunities for low-income groups. The essays were based on the results of a survey conducted by petitioner.

On his 1967 Federal income tax return, petitioner, claimed a deduction for

charitable contribution of the essays to the National Council of Negro Women. In claiming that deduction petitioner reported a fair market value of $1,500 for the essays. Respondent disallowed the deduction claimed with respect to the donation of the essays except for $50 allowed for certain out-of-pocket expenses. In his amended petition, petitioner reported a fair market value of $2,250 for the essays.

On his 1967 return, petitioner also claimed a business expense deduction in the amount of $1,246, part of which was expended for travel. Respondent disalloved the claimed dedution with respect to certain travel expenses. Although the parties stipulated that the travel expenses in issue amounted to $860.99, the petitioner now contends that the travel expenses incorrectly disallowed by the respondent amounted to

$728.14.

OPINION

Section 170(A). I.R.C. 1954, allows as a deduction any charitable contribution when payment is made within the taxable year. Section 170(c) defines a charitable contribution as a contribution or gift to or for the use of certain specified classes of organizations. Respondent agrees that the National/Council of Negro Women qualifies as a member of these specified classes.

The regulations provide that no deduction is allowable pursuant to section 170 for contribution of services. Sec. 1.170-2(a)(2), Income Tax Regs. The regulations also provide that if a contribution is made in property other than money, the amount of

the deduction is determined by the fair market value of the property at the time of the contribution. The regulations define fair market value as the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. Sec. 1.170-1(c)(1), Income Tax Regs.

Respondent contends that the donation does not qualify for a charitable deduction because it was in the nature of services rather than of property. Respondent also contends that even if the donation qualifies for a charitable deduction, petitioner has failed to establish the fair market value of the donation.

We held in John R. Holmes, 57 T.C. 430 (1971), that the donation of two films

by the taxpayer who produced them to certain qualified charities constituted a contribution of property, and not of services. The taxpayer, an independent film producer, showed the completed films on a television station before donating them to the charities.

One film, donated to a hospital, was based on a musical comedy stage show, the purpose of which was to raise funds for the cardiac center at the hospital. The other film, donated to a boys' club, depicted the boys' club's various activities and showed the poor condition of its facilities.

We believe that the facts in the present case are analagous to the facts in Holmes. In both situations, petitioner donated artistic properties that he himself had created. In Holmes we noted that the donated film was something different from the

petitioner's services and the unprocessed film. Similarly, the completed manuscript was something different from the petitioner's services and the blank paper. In both cases the donor maintained physical ownership over the property before it was donated. Accordingly, we conclude that the donation of artistic property, whether it be a film production or an essay, constitutes a donation of property rather than of services. We therefore hold that petitioner is entitled to a deduction under section 170 for his donated two essays.

The amount of the deduction to which petitioner is entitled is determined by the fair market value of the essays at the time of the contribution. What the for market value of a piece of property is at an given date is a question of fact, to be resolved from a

consideration and weighing of all the relevant evidence in the record. Philip Kaplan 43 T.C. 663 (1965). Although petitioner presented testimony at trial as to the fair market value of the essays, respondent failed to call any witnesses and failed to present any evidence regarding fair market value. Petitioner testified that he charged $150 per day as a consulting fee, that he worked on the essays for 15 days and that the value of the essays therefore is $2,250. We are unable to accept petitioners argument regarding the value of the essays. Petitioner testified that prior to the contribution of the essays he had been employed as a consultant for a fee of $150 per day during April 1967. In his Federal income tax return for 1967, petitioner reported $150 as income from consulting work. Thus, petitioner contends that

the value of his services in writing the essays should be based on a fee which he had charged for only 1 day prior to the donation of the essays. We are not persuaded that this single instance provides a proper basis to value the petitioner's services as a consultant.

Petitioner also testified that if the essays had been contracted for in an open market, they would have produced a bid of between $10,000 and $20,000. The basis for petitioner's opinion was his previous experience in administerng approximately $3 million worth of technical assistance contracts for the Ozark Regional Commission. Petitioner, however, did not have final grant authority with regard to these technical assistance contracts. Furthermore, petitioner presented no evidence regarding the similarity

between the essays in issue and the work product specified in the technical assistance contracts that he helped administer. We are not persuaded by petitioners self-serving and uncorroborated testimony.

On the basis of the entire record, and keeping in mind that petitioner has the burden of proof, we have determined that the essays had a value of $500 at the time they were donated to the National Council for Negro Women.

Section 274 provides in part that no deduction shall be allowed under section 162 or 212 for any traveling expenses unless the taxpayer substantiates, by adequate records or by sufficient evidence corroborating his own statement, the amount of the expenses, the time and place of the travel, and the business purpose of the travel. Petitioner contends that he expended

$728.14 for travel between Little Rock, Ark., Oklahoma City, Okla., and Austin, Tex., during the period of February 1967 through May 1967. Respondent concedes that this amount was actually spent for travel during 1967 but argues that petitioner has failed to establish the business purpose of the travel.

Petitioner testified that the purpose of these trips related to his business. Petitioner has failed, however, to present adequate records or corroborating evidence to substantiate the business purpose of the travel. See William F. Sanford, 50 T.C. 823 (1968), affirmed per curiam 412 F.2d 201 (C.A>2, 1969), certiorari denied 396 U.S. 841 (1969). Under these circumstances, petitioner is not entitled to any deductions with respect to his claim of travel expenses.

Decision will be entered under Rule 50.

BLACK'S LAW DICTIONARY

Abridged Fifth Edition

Definition:

"Spontaneous declaration. A statement is admissible as a ""spontaneous declaration"" if there was an occurrence sufficiently startling to produce a spontaneous and unreflecting statement, if there was an absence of time to fabricate, and if the statement related to the circumstances of the occurrence."

AEROSPACE ENGINEERING

(Magazine)

APRIL 1989 EDITION

"Raytheon rolls-out AMRAAM"

"The U.S. Air Force is expected to receive the first production Advanced Medium Range Air-to-Air Missile (AMRAAM) from the second-source contractor when Raytheon Corp. roll out of the missile in late February. AMRAAM will be a ""launch and leave"" radar guided missile, designed to maintain air superiority well into the next century. AMRAAM is being produced by both Hughes Aircraft Corporation and Raytheon. Hughes rolled out its first production missile last October. The first operational AMRAAM is due to be delivered to Tactical Air Command's 3rd Tactical Fighter Wing in Fall 1989."

AVIATION WEEK AND SPACE TECHNOLOGY

Magazine: 1987 Month Unknown

SCIENCE/SCOPE

1987 Hughes Aircraft Company

*A single U.S. Air Force F-16 launched two Advanced Medium-Range Air-to-Air Missiles (AMRAAMS) in rapid succession and scored two successes despite evasive maneuvers by the target drones. Both drones were flying at 26,000 feet above the White Sands Missile Range in New Mexico. The F-16 was flying at approximately the same speed, but 10,000 feet below the drones. In the terminal phase of the flight, the drones made evasive maneuvers, one a sideways turn, the other a dive at three times the force of gravity. Both

AMRAAMs using their on-board active radar continued to track to intercept. This was the first multiple-launch for the Hughes-built AMRAAM and the 20th successful launch in 23 missions, the most successful test program ever for a complex missile. AMRAAM, under full scale development for the U.S. Navy and Air Force, is expected to increase the effectiveness of the F-16 by a factor of six."